counted for or where it is not shown that the other party has had notice to produce it. *De Michele* v. *London & Lancashire Fire Ins. Co.* (Utah 1912), 120 Pac. 846.

This case follows the few decisions touching this point which have been handed down in the last few years. The non-production of an original must be satisfactorily explained before evidence may be introduced to prove the correctness of a copy. *Tutchin's Trial,* 14 How. St. Tr. 1095; *Cannon* v. *Kinney,* 3 Har. 317; *Sweigart* v. *Lowmarter,* 14 Serg. & R. 200; *Manson* v. *Blair,* 15 Ind. 242. And a press copy of a letter is not admitted in evidence until the loss or non-production of the original has been accounted for. *Westinghouse Co.* v. *Tilden,* 56 Neb. 129; *Traber* v *.Hicks,* 131 Mo. 180; *Heilman Milling Co.* v. *Hotaling,* 21 Ky. Law Rep. 950; *Anglo-American Packing & Provision Co.* v. *Cannon,* 31 Fed. 313. Photographic reproductions of a document are not originals and can be used only as secondary evidence. *Eborn* v. *Zimpelman,* 47 Tex. 503; *Howard* v *.Illinois Trust and Savings Bank,* 189 Ill. 568. It has been held however, that a copy of a report of an accident which is one of three, all made at the same time by the same impression of the copying pencil, must be regarded as a triplicate original. *Virginia-Carolina Chemical Co.* v. *Knight,* 106 Va. 674; and contracts, written notices of demand, and the like, executed by the parties thereto in duplicate or triplicate form have been considered as duplicate or triplicate originals, each being primary evidence. *Totten* v. *Bucy,* 57 Md. 446; *Gardner* v. *Eberhart,* 82 Ill. 316; *Westbrook* v. *Fulton,* 79 Ala. 510; *Waterman* v. *Davis,* 66 Vt. 83; *Catron* v. *German Insurance Co.,* 67 Mo. App. 544; *Savannah Bank and Trust Co.* v. *Purvis,* 6 Ga. App. 275; *Reeves* v. *Martin,* 20 Okla. 558. In *Rosenberg* v. *People's Surety Co.,* 125 N. Y. Supp. 257, which was an action upon a policy of burglar insurance, a carbon copy of the amounts claimed to be lost was not admitted. But in this case the insured had made a written list, and from the list had made the typewritten copy attached to the proofs of loss, and at the same time the carbon copy offered in evidence. In *Booker-Jones Oil Co.* v. *Nat. Refining Co.* (Tex. Civ. App. 1910), 131 S. W. 623 the carbon copy of a letter written by another was held objectionable on the ground that the letter was the best evidence. *State* v. *Teasdale,* 120 Mo. App. 692, held that the admission of carbon copies as primary evidence in a criminal case was error, although the same court in *Wright* v. *Chicago etc. Ry. Co.,* 118 Mo. App. 392, admitted carbon copies of a scale of tickets as primary evidence. The following cases hold with the principal case: *International Harvester Co. of America* v. *Elfstrom,* 101 Minn. 263, 12 L. R. A. (N. S.) 343, 118 Am. St. Rep. 626, 11 AM. & ENG. CAS. ANN. 107; *Cole* v. *Ellwood Power Co.,* 216 Pa. St. 283; *Burnett Cigar Co.* v. *Art Wall Paper Co.,* 164 Ala. 547; *Chesapeake & O. R. Co.* v. *Stock,* 104 Va. 97; *Goodman* v. *Saperstein* (Md. 1911), 81 Atl. 695.

EVIDENCE—JUDICIAL NOTICE THAT BEER IS AN INTOXICATING LIQUOR.—Appellant was convicted of violating the local option law by a sale of beer, and his conviction was affirmed. Upon motion for rehearing appellant insisted that the court had erred in taking judicial notice that beer is an intoxicating liquor when no question had been raised as to the properties of the liquor,

the only evidence in the case being that beer was sold. *Held,* (DAVIDSON, J. dissenting) under ACTS 1ST CALLED SESS. 31ST LEG. c. 17, defining intoxicating liquors as including fermented liquor the court will take judicial notice that beer is an intoxicating liquor. *Moreno* v. *State* (Tex. Cr. R. 1912), 143 S. W. 156.

The opinion in this case overrules a long line of decisions by the Texas Court of Criminal Appeals holding that courts will not take judicial notice that beer is an intoxicating liquor. *Cassens* v. *State,* 48 Tex. Cr. R. 186; *Sullivan* v. *State,* 48 Tex. Cr. R. 201; *Potts* v. *State,* 50 Tex. Cr. R. 368, 97 S. W. 477, 7 L. R. A. (N. S.) 194, 123 Am. St. Rep. 847; *Schwulst* v. *State,* 52 Tex. Cr. R. 426. This court, in accord with the majority, has followed the rule that courts will take judicial notice of the intoxicating properties of well known liquors, such as whiskey and wine. *Smith* v. *State,* 56 Tex. Cr. R. 501; *The Kawailani,* 128 Fed. 879; *Nussbaumer* v. *State,* 54 Fla. 87; *State* v. *York,* 74 N. H. 125. And the Texas Court of Civil Appeals has always held with the many courts that take judicial notice that beer is an intoxicating malt liquor. *Maier* v. *State,* 2 Tex. Civ. App. 296; *White* v. *Manning,* 46 Tex. Civ. App. 298; *Briffitt* v. *State,* 58 Wis. 39; *Myers* v. *State,* 93 Ind. 251, (overruling *Kurz* v. *State,* 79 Ind. 488, and a long line of preceding decisions), *Peterson* v. *State,* 63 Neb. 251; *Vines* v. *State* (Wyo. 1911), 116 Pac. 1013; BLACK, INTOXICATING LIQUORS, § 17, 7 ENCYC. OF EVIDENCE, 675, 676. Many courts follow the doctrine so lately rejected by the Texas court and hold that in the absence of proof the court will not take judicial notice that beer is an intoxicating malt liquor. *Netso* v. *State,* 24 Fla. 363, *DuVall* v. *City Council,* 115 Ga. 813; *Hansberg* v. *People,* 120 Ill. 21; *Blatz* v. *Rohrbach,* 116 N.Y. 450; *State* v *Beswick,* 13 R.I. 211; *State* v. *Sioux Falls Brewing Co.,* 5 S. D. 39. In the cases cited above the rulings are made upon the use of the word beer unqualified. The cases must be distinguished from those holding that the court will take judicial notice that lager beer is intoxicating. *State* v. *Church,* 6 S. D. 89; *State* v. *Giersch,* 98 N. C. 720. *Contra, Smith* v. *State,* 113 Ga. 758; *People* v. *Hart,* 24 How. Pr. 289; *People* v. *Schewe,* 29 Hun 122; or where the statute expressly includes all malt liquors, *State* v. *Morehead,* 22 R. I. 272; or where lager beer is enumerated among the intoxicating liquors the traffic in which is regulated or prohibited. *Com.* v. *Blos,* 116 Mass. 56; *Murphy* v. *Montclair,* 39 N. J. L. 673.

GARNISHMENT—IMPEACHING AFFIDAVIT—DISSOLUTION.—In an action on book account an affidavit of garnishment was filed alleging that the defendant had no property liable to execution to satisfy the plaintiff's demand. The defendant moved to dissolve the garnishment, supporting the motion by affidavits, and the plaintiff filed affidavits supporting the garnishment. Upon trial the court found for the defendant and vacated the garnishment. *Held,* that the garnishment was properly dismissed. *Hockaday & Co.* v. *King* (Okla. 1912), 120 Pac. 565.

The general rule is, "Though the affidavit is not conclusive, either upon the defendant or the garnishee, yet if the garnishment should be dismissed for any reason, as that the defendant has property liable to execution sufficient to satisfy any judgment that may be recovered against him, such facts